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IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1949.

No. 199

ELMER MICHAEL WALSH, Sheriff of Cook County, Illinois,

Petitioner,

vs.

UNITED STATES OF AMERICA, Ex Rel, RALPH E. WHITE,

Respondent.

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

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STATEMENT.

The District Court when first applied to for the Writ of Habeas Corpus did not issue the writ instanter, *pro forma,* but held a preliminary hearing and went into the merits of the whole matter. Convinced that the record

warranted judicial action the writ was issued, and relator brought before the Court. Upon a full hearing, relator was discharged.

On appeal by the sheriff the judgment was affirmed. Honorable Otto Kerner dissented. The majority opinion was written by the learned District Judge, Walter C. Lindley, Honorable J. Earl Maor, concurring.

The facts of the case appear in the Finding of Facts of the District Judge, Honorable Michael L. Igoe (Tr. 304), and in the majority opinion of the Court of Appeals (Tr. 426), (174 Fed. 2d 49).

The relator Ralph E. White was clerk of the Village of Lyons and arranged the tickets on the ballot for the annual election pursuant to an order of the Municipal Electoral Board.

The order had been entered in a hearing on objections to a ticket, in which hearing the Board had final and exclusive statutory jurisdiction.

In a petition for mandamus to compel relator as clerk to put on the ballot the ticket which the Municipal Electoral Board had ordered off, it was defended that the Court was without jurisdiction to interfere with the affairs of another department of government, which had exclusive jurisdiction.

The Court ordered the ticket on the ballot. The relator, caught between two fires, elected to adhere to his statutory duty and did not obey. The Court adjudged relator in contempt and ordered him committed for six months.

Appeals were taken and prosecuted without avail to the end. Application was then made to the Supreme Court

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of Illinois for Habeas Corpus but that the Court refused to take jurisdiction.

A correct decision of the Habeas Corpus case required the taking of evidence and the Supreme Court of Illinois will not hear evidence in a habeas corpus matter.

Petition for Writ of Habeas Corpus was then filed in the District Court which, after a preliminary hearing, elected to take jurisdiction and on full hearing later discharged relator.

Reasons for Denying the Writ of Certiorari.

The sole question presented here is whether the District Court so far abused its discretion in exercising jurisdiction to grant the Writ of Habeas Corpus that its judgment, though just, must be reversed. If the District Court did not abuse its discretion all other questions raised melt away.

The record shows, and the majority opinion demonstrates that the respondent White was illegally imprisoned and awaited only a stroke of the judicial pen to open the prison door.

There could be, we assert, no abuse of discretion in the District Court if it issued a Writ of Habeas Corpus to free a United States citizen unjustly imprisoned.

Jurisdiction existed to issue the writ; the exercise of jurisdiction rested in discretion. When such discretion is exercised it is not a basis for appeal or allegation of error. The objection to its exercise then passes to the merits of the case.

The merits are not here, where, as appears from the petition herein, the only reason assigned for issuing of the

Writ of Ceriorari is that the District Court erred in taking jurisdiction to issue the Writ of Habeas Corpus because State remedies were not exhausted. But we suggest that the requirement of exhaustion of State remedies is a procedural requirement and passed out of consideration when the District Court in its discretion exercised jurisdiction notwithstanding the procedural rule.

The District Court was of opinion that relator had exhausted his remedies. (Opinion of Trial Judge Tr. 393). The thought is that where certiorari writs are discretionary which this Court, and the exercise of jurisdiction in Habeas Corpus cases is discretionary with the Supreme Court of Illinois the remedy is so far unpredictable and uncertain as to a hearing upon the merits that the relator might well turn to the United States District Court for relief as a procedural expediency without offending against the general rule as to exhaustion of remedies. The relief of this court from the great crush of business that now engulfs it would in any event suggest that this Court might well excuse itself from determining the question of certiorari and permit the District Courts to take over when State remedies had been exhausted. That thought we read between the lines in *Wade* v. *Mayo*, 334 U. S. 672, 680.

BRIEF.

The exercise of discretion by the District Court to entertain a petition for Habeas Corpus is not a proper subject of review, being the exercise of an inherent procedural right of the Court. That State remedies should be exhausted before application to a United States Court for a Writ of Habeas Corpus, is not a jurisdiction requirement but a procedural rule which may be excused by the District Court in the exercise of sound discretion.

Wade v. *Mayo*, 334 U. S. 672.

ARGUMENT.

If the record conditions were reversed and the District Court had refused to take jurisdiction on the procedural ground that one State remedy yet remained for exhaustion, it could be urged that the District Court, in so doing, had abused discretion, or, on the other hand, that it was justified in not using jurisdiction to issue the writ. But once discretion had been exercised to hear the relator notwithstanding failure to pursue state remedies to the end there was no error, for the court was in the exercise of its inherent jurisdiction as of right, and the procedural question, was relegated to the background as of course.

We assume we need go no further than to suggest to the Court that in the recent case of *Wade* v. *Mayo*, 334 U. S. 672, where the relator had failed to seek certiorari from the State Court's denial of Habeas Corpus this Court refused to set any rigid rule in these words:

> "In short we refuse to codify the failure to invoke the discretionary powers of this Court into an absolute denial of the District Court's power to entertain a habeas corpus application. The prevention of undue restraints on liberty is more important than mechanical and unrealistic administration of the federal courts."

The learned Judge in his opinion filed in this case so expressed himself. (174 Fed. 2d, 4[illegible])

Here the District Court liberated a United States citizen held on void state process; and even if such action were an abuse of discretion, the fact that the judgment discharging relator was correct, obviates any error.

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The findings of fact of the District Court not being questioned, and the only reason assigned for granting the Writ of Certiorari, being an abuse of discretion in issuing the Habeas Corpus Writ, at a stage of proceedings when State remedies had not been exhausted, the problem solves itself. There is no basis for the Writ of Certiorari.

We respectfully suggest that the judgment of the District Court is just, the decision of the Court of Appeals is correct, and the Court of Appeals should be accordingly affirmed.

Respectfully submitted,

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Attorneys for Relator, Respondent here.